***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

WRIT PETITION No. 6968 OF 1999

% 28-02-2007

Sonnapaneni Subba Ramaiah & others

…Petitioners

And

$ State of Andhra Pradesh, rep. by
its Prl.Secretary to Govt. Irrigation & Command
Area Development (PW.TGP) Department,
secretariat buildings, Hyderabad & others

…Respondents

! COUNSEL FOR PETITIONERS: Mr.Vedula Venkata Ramana

^COUNSEL FOR RESPONDENTS: Mr.A.Satya Prasad, Senior Counsel

< Gist:

> Head Note:

? CITATIONS:

1. 2006 AIR SCW 1309

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O R D E R:

Initially, this writ petition was filed by 8 petitioners. Subsequently, petitioners 9 to 272 were added, through an order of this court in WPMP No.31603 of 2005.

A large size irrigation resource, by name Kaluvoyu tank (for short "the tank"), was in existence for the past several centuries, in the present Kalavoyu Mandal of Nellore District, running into several square miles, spread over 2 to 3 villages, in the locality, at the Full Tank Level (FTL), and it has an ayacut of Acs.1778.00. The surplus wear of the tank is at a height of 79.15 metres from the lowest point. The tank was mainly rain fed. Naturally, the tank was not always at its FTL, and the substantial part of the foreshore area had to surface, for substantial part of the year, either on account of the tank not being full,

or due to the use of the water for irrigation.

Petitioners and their forefathers were granted settlement pattas, over an extent of Acs.520.00, in the foreshore area. The pattas are said to have been granted, between the years 1908 and 1925. It is stated that between the years 1978 and 1982, about Acs.20.00 of such land was assigned. It is the case of the petitioners that depending on the extent of rainfall of the concerned year, one or two crops are being raised by them, by drawing water from bore wells, and that they are eking their livelihood from it.

A major irrigation project, by name 'Telugu Ganga', was taken up by the State Government, some time in the year 1985. The water drawn from Srisailam Reservoir is to flow southwards, up to Nellore District, for irrigation purposes. Somasila project is part of the major project. Some quantity of the water is to be supplied to the State of Tamilnadu for drinking purpose. On the way, several Balancing Reservoirs were to be constructed or maintained. The tank was identified as one of the balancing reservoirs to be filled through the south feeder channel of Somasila Project. The work was in progress.

The Executive Engineer, Irrigation Department, Somasila Project Division, issued a memo dated 4.9.1990, stating that it has been decided to release water to the tank, through south feeder channel, and that the farmers, who hitherto were cultivating the foreshore area of the tank, must desist from doing so. The petitioners felt aggrieved by this step. They filed W.P.No.14319 of 1990, before this court, seeking a declaration that the action of the respondents therein, in trying to release the water from Somasila Project to the tank, without acquiring their lands, is illegal and arbitrary, and for issuance of necessary directions, in this regard. The writ petition was disposed of by a Division Bench of this Court on 15.4.1997, leaving it open to

the petitioners, to file a representation before the concerned authorities, who in turn, were directed to take a decision within two months from the date of their representations.

Petitioners state that such representations have been made to various authorities, the sites were inspected and enquiries were conducted, at various levels. They state some authorities of the State Government have recommended payment of compensation, and despite the same, nothing had materialised. This writ petition is filed, seeking a writ of mandamus to declare that;

a) The respondents are not entitled to release the water into Kaluvoyu tank, till such time as the lands belonging to the petitioners in the foreshore of the tank are acquired and reasonable compensation is paid;
b) The petitioners are entitled to be paid compensation, for being prevented from cultivating the land in the foreshore area of the said tank, with effect from 1.9.1990.

The petitioners contend that almost absolute rights are accrued to them, on the basis of the pattas in their favour, and such rights cannot be defeated by the respondents, without paying adequate compensation.

The 4th respondent filed two counter affidavits, one on 6.11.2000 and another on 18.3.2002. The gist of the same is that the grant of settlement pattas, in favour of the petitioners, or their predecessors, was without prejudice to the right of the Government to maintain the tank, and that the petitioners cannot be said to have suffered any detriment, if the FTL is maintained with the water, fed through Somasila Project. The details of the project, insofar as it relates to the tank, and the hydraulic particulars of the tank are furnished. It is stated that the water spread area of an irrigation tank always vests in the Government, irrespective of the permission granted

to ryots, to cultivate it, whenever the land is exposed to surface. It is contended that the question of the Government acquiring its own land, does not arise.

The 4th respondent furnished detailed particulars, as to the cultivation of the foreshore area by the petitioners, particularly even after the water was let into the project through Somasila project. He ultimately pleaded that the petitioners are not entitled to be paid the compensation.

Sri Vedula Venkata Ramana, learned counsel for the petitioners, submits that on account of long standing enjoyment of the land, on the strength of the pattas granted to them, the petitioners have acquired valuable rights, *vis-à-vis* the land. He submits that the pattas were almost absolute in nature, so much so, that alienations and mutations were permitted and enjoyed from generations together. Learned counsel points out that the conversion of the tank into a balancing reservoir, had resulted in a situation, where the tank is always at its FTL, and the petitioners are denied the right to cultivate the foreshore area. According to him, such a development could have been taken place, only after the lands held by the petitioners were acquired, or at least, the respondents ought to have examined the alternative proposals for diversion of the feeder channel, to ensure that the foreshore lands are not submerged.

Sri A.Satya Prasad, learned Senior Counsel, appearing for the State, submits that irrespective of the nomenclature employed in the pattas granted in favour of the petitioners and their predecessors, the purport thereof is only to enable them to cultivate the foreshore area, as and when the water level recedes. He points out that it is the primary duty of the State, to maintain the tanks, not only from the point

of view of providing irrigation, but also to maintain the ecological and environmental balance. Learned counsel submits that when the land stood always vested in the Government, the question of acquiring the same does not arise.

Before undertaking discussion on the dispute between the parties, one aspect needs to be clarified. If the conversion of the tank into a balancing reservoir has resulted in submergence of any additional area, the effected persons are entitled to insist that their lands cannot be subjected to submergence, without acquisition and unless they are paid compensation. In the affidavit filed in support of the writ petition, the petitioners have stated that the pattas granted in their favour were, as regards the foreshore area of the tank. This expression is capable of being taken to mean, the land that touches the shore. By its very nature, the shore of a water body keeps on changing, depending on the water level. It is quite possible that the land adjoining the tank, when it is to its brim, can also be treated as foreshore, though it is not part of the tank.

Each irrigation source maintained by the State, has its own hydraulic particulars. Its FTL is defined and the water spread area of the tank, at its FTL, is always treated as part of the tank. If the level of the wear, through which the excess water of the tank flows out, is raised, naturally, the water spread area would increase, and neighbouring land would be submerged. In the instant case, except that a feeder channel from Somasila Project was let into the tank, no other change has taken place. All the hydraulic particulars of the tank remained intact. The only difference is that there is a possibility of the tank being full for a substantial part of the year, compared to a situation, where it was not fed through any channel of the project. Therefore, it emerges that the character of the land under the

enjoyment of the petitioners remained the same, even after the conversion of the tank, into a balancing reservoir.

The basic purpose of constructing and maintaining irrigation tanks is, to collect and preserve the rain water received from the catchment area and to supply the same to the ayacut, for cultivation. It is but natural that the tanks which are purely rain fed, are not always full. The Government has been permitting cultivation of the tank bed land by ryots, particularly hailing from weaker sections of the society, as and when the water receded. To regulate the cultivation of such lands, pattas of over different extents were also granted, lest uncertainty prevails. The permission so granted, called by whatever name, is always subservient to the maintenance of the tank. The right to cultivate such lands, by the persons granted pattas, is subject to the land not being covered by water. Such a beneficiary cannot insist that the land must not be covered by water. Irrespective of the length of the period, for which the patta is held, the character of the tenement and the relationship of the pattedar, *vis-à-vis* the tank, remains unchanged.

In several places, indiscriminate destruction of, or damage to irrigation resources, has taken place. Many of them have, in fact, vanished over a period of time. Not only that the irrigation facility ceased, but also the ecological balance in the area got disturbed. The impact has been so enormous that the Governments and Agencies through out the world had to wake up and undertake measures to preserve them. In this regard, the judgment of the Supreme Court in ***INTELLECTUALS FORUM, TIRUPATHI v. STATE OF A.P.***[1], is both informative and educative. The matter has been examined at length, with reference to the International Conventions, Laws obtaining in the country, and the judgments rendered by the Supreme Court from time

to time, on the subject. The Court exhorted the Governments and their authorities, to preserve and maintain irrigation tanks and to avoid putting of the tank bed lands, to any other use. The concepts, such as, 'Sustained Development', 'State Responsibility', 'Public Trust Property', 'Inter Generational Equity', etc. have been explained, with reference to their origins. The subject matter before the Supreme Court related to the case, where the tank bed land was converted into residential area. Such a grave situation does not exist in this case. The activity undertaken by the petitioners did not result in obliteration of the water spread area of the tank.

The main relief claimed by the petitioners is that the tank cannot be converted as balancing reservoir, unless their lands are acquired. It is no doubt true that on account of the filling of the tank with the water of the project, the water level is almost constantly maintained, and the land in respect of which pattas were granted, is submerged for most of the year, and thereby, the petitioners suffer some detriment. However, when it comes to the question of insisting that a particular piece of land must be acquired, it presupposes the ownership thereof, having been vested in the persons so insisting, and the agency, which intends to use the land not being possessed by any rights. Such a situation does not obtain in the instant case. As observed earlier, the water spread area of a tank always vests in the Government, and mere permission accorded to the ryots, to cultivate the foreshore area, does not confer any ownership, or other related rights, except the right to cultivate, whenever the lands surface. When the Government continued to be the owner of the land, the question of compelling it to acquire its own land, does not arise.

Another facet of the relief claimed by the petitioners is that they

be paid compensation, with effect from 1.9.1990, that is the year, in which the water from the project was let into the tank, since they were disabled from cultivating the land. This court does appreciate the hardship suffered by the petitioners, on account of their being disabled from cultivating the land. However, when a public cause is advanced, and it did not bring about any substantial change, the State cannot be required to compensate the effected the parties.

A peculiar situation deserves to be noticed here. If the tank is not full, the cultivators of the foreshore area get advantage and the corresponding loss is felt by the ayacutdars. Conversely, if the tank is full, the ayacutdars get assured water supply for the crops, but the pattedars of the foreshore area cannot derive the benefit of cultivating the lands. In such a delicate situation, the balance must naturally swing in favour of the ayacutdars, for whose benefit the tank was constructed and who pay the land cess, etc.

In para-9 of the counter affidavit, dated 18.3.2002, filed by the 4th respondent, the particulars of the cultivation in the foreshore area, for the years 1976-77 to 1999-2000, are furnished. Their gist is as under:

Sl.No.	***Year***	***Approximate extent cultivated***
01.	1976-77	About Acs.400-00
02.	1979-80	About Acs.100-00
03.	1981-82	About Acs.200-00
04.	1983-84	About Acs.100-00
05.	1984-85	About Acs.200-00
06.	1986-87	About Acs.200-00

07.	1988-89	About Acs.200-00

After the tank was converted into a reservoir:

08.	1989-90	About Acs.500-00
09.	1991-92	About Acs.200-00
10.	1992-93	About Acs.500-00
11.	1993-94	About Acs.150-00
12.	1996-97} 1997-98}	- N I L -
13.	1998-99	Almost the entire area claimed by the petitioners
14.	1999-2000	Almost the entire area claimed by the petitioners

With minor or substantial changes as to area, cultivation did take place, both before and after the tank was converted into a balancing reservoir. Therefore, it is not a case where the tank to its FTL, ever since 1990. Fluctuations in the period of submergence may have varied. That factor by itself does not entail them to claim compensation.

This court is of the view that the detriment suffered by the petitioners can certainly be compensated to a large extent, by the Government by extending them the benefits, which are derived from the tank, such as, fishing rights, etc. A proposal for extending them the benefits, proportionate to the area held by them and loss sustained by them, can be considered, by taking all the concerned into confidence.

Further, as and when the land assigned or allotted to the petitioners surfaces, they can be permitted to cultivate the same, as in the previous years.

For the foregoing reasons, the writ petition is disposed of, directing that;

a) The Government cannot be compelled to acquire any water spread area, at the Full Tank Level of the tank.

b) The petitioners shall be entitled to cultivate the land, in respect of which pattas were granted to them, as and when such land surfaces.

c) The Government shall consider the feasibility of extending the benefits derived from fishing and other activities of the tank to the petitioners, proportionately, in accordance with law, for the period during which they are disabled from cultivating the lands.

There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

Dt. 28th February 2007

Note: L.R.Copies be marked

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[1] 2006 AIR SCW 1309